

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 ALBERTO LOCSIN *et al.*,) Civil No. 09cv153-L(RBB)
12 Plaintiffs,)
13 v.) **ORDER GRANTING
14 QUICK LOAN FUNDING, *et al.*,) DEFENDANTS' MOTION TO
15 Defendants.) DISMISS**
16 _____)

17 In this mortgage fraud action, Defendants Countrywide Home Loans, Inc.
18 (“Countrywide”) and Mortgage Electronic Registration Systems, Inc. (“MERS,” collectively
19 “Moving Defendants”) filed a motion to dismiss pursuant to Federal Rule of Civil Procedure
20 12(b)(6). Plaintiff did not oppose the motion. The Moving Defendants’ motion is **GRANTED**
21 as unopposed.

22 “If an opposing party fails to file papers in the manner required by Civil Local Rule
23 7.1(e)(2), that failure may constitute a consent to the granting of a motion or other request for
24 ruling by the court.” Civ. Loc. R. 7.1(f)(3). “Failure to follow a district court’s local rules is a
25 proper ground for dismissal.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (dismissal of a
26 *pro se* prisoner’s complaint pursuant to local rule for failure to file an opposition to a motion to
27 dismiss).

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1 “Before dismissing the action, the district court is required to weigh several factors: (1)
 2 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its
 3 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
 4 cases of their merits; and (5) the availability of less drastic sanctions.” *Id.* (internal quotation
 5 marks and citations omitted). “Although it is preferred, it is not required that the district court
 6 make explicit findings in order show that it has considered these factors . . .” *Yourish v. Cal.*
 7 *Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th
 8 Cir. 1992).

9 The court is mindful that “[p]ublic policy favors disposition of cases on the merits,”
 10 which weighs against dismissal. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002).
 11 Nevertheless, dismissal is appropriate in cases where other factors support it. *See, e.g., id.* at
 12 643; *Yourish*, 191 F.3d at 990, 992.

13 “The public's interest in expeditious resolution of litigation always favors dismissal.”
 14 *Yourish*, 191 F.3d at 990. Furthermore, “[i]t is incumbent upon the Court to manage its docket
 15 without being subject to routine noncompliance of litigants such as” Plaintiff in this case. See
 16 *Pagtalunan*, 291 F.3d at 642. This factor therefore favors dismissal. Next, “the risk of prejudice
 17 to the defendant is related to plaintiff's reason for defaulting in failing to timely” comply with
 18 the due dates established by local rules. *See Yourish*, 191 F.3d at 991. Plaintiffs' opposition was
 19 due four and a half months ago, on March 30, 2009. Consistent with the practice in numerous
 20 other cases, *see infra*, Plaintiffs, through their counsel, to date have not filed an opposition or a
 21 notice of non-opposition, and have not provided any explanation at all for their delay.
 22 “Unnecessary delay inherently increases the risk that witnesses' memories will fade and
 23 evidence will become stale.” *Pagtalunan*, 291 F.3d at 643. The prejudice factor, supported by
 24 unexplained and lengthy delay, also favors dismissal in this case.

25 This case does not present an innocent circumstance of a forgetful counsel. Plaintiffs'
 26 counsel has developed a habit of not responding to motions to dismiss. In addition to the present
 27 case, he has followed this habit in numerous cases pending in this District, three of which were
 28 assigned to the undersigned. *See, e.g., Bartolome v. Downey Savings & Loan*, 08cv1777 LAB

1 (WMC); *Uribe v. Countrywide Financial*, 08cv1982 L (NLS); *Uribe v. MorgageIT*, 08cv1983 L
 2 (NLS); *Ajero v. Aegis Wholesale Corp.*, 08cv2002 W (JMA); *Bantog v. Downey Savings &*

3 *Loan*, 08cv2212 MMA (POR); *Cataulin v. Washington Mutual Bank*, 08cv2419 JM (NLS); *Silva*
 4 *v. US Bank*, 09cv36 JAH (BLM); *Rosales v. Downey Savings & Loan*, 09cv39 WQH (AJB);
 5 *Hernandez v. Downey Savings & Loan*, 09cv40 JAH (JMA); *Floyd v. Millennium Mortgage*

6 *Corp.*, 09cv115 BEN (NLS); *Andrade v. Wachovia Mortgage*, 09cv377 JM (WMC). In each of
 7 these eleven cases, the court was put to the task of reviewing the complaint and a motion to
 8 dismiss without an opposition from the plaintiff. In the present case individually and in all of the
 9 listed cases cumulatively, counsel's bad habit has interfered with and delayed the court's docket,
 10 siphoning the court's time and resources away from cases where the litigants see it fit to devote
 11 enough attention to provide the court with the benefit of their arguments when substantive
 12 motions are filed against their interests. Given the persistence of this practice, the court finds
 13 that yet again offering counsel a less drastic alternative, such as considering the merits of the
 14 Moving Defendants' motion without the benefit of Plaintiffs' argument in opposition, would
 15 serve only to encourage the bad habit and consume more of the court's time and resources which
 16 could have been devoted to other cases on its docket. *See Pagtalunan*, 291 F.3d at 643.

17 The Moving Defendants' motion to dismiss is **GRANTED** as unopposed.

18 **IT IS SO ORDERED.**

19
 20 DATED: August 18, 2009

21
 22 
 23 M. James Lorenz
 24 United States District Court Judge

25 COPY TO:

26 HON. RUBEN B. BROOKS
 27 UNITED STATES MAGISTRATE JUDGE

28 ALL PARTIES/COUNSEL